



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 17 2003

Scott A. Sinder, Esq.
Christy Hallam DeSanctis, Esq.
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Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007-5108

RE: MUR 5197
Federal National Mortgage
Association ("Fannie Mae")

Dear Mr. Sinder and Ms. DeSanctis:

On April 23, 2001, the Federal Election Commission notified your client, the Federal National Mortgage Association ("Fannie Mae"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on June 10, 2003, found that there is reason to believe the Federal National Mortgage Association violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable

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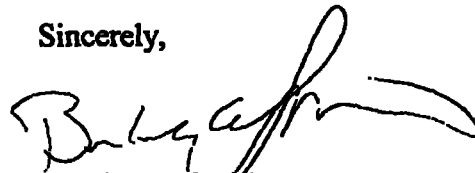
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cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you have any questions, please contact Michael E. Scurry, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley A. Smith', with a long horizontal flourish extending to the right.

Bradley A. Smith
Vice Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT:** Federal National Mortgage Association MUR: 5197
5 ("Fannie Mae")
6
7

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 John Berthoud, President of the National Taxpayers Union ("Complainant"), *see* 2 U.S.C.
10 § 437g(a)(1), and on the basis of information ascertained by the Commission in the normal
11 course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). Complainant
12 alleged that the Federal National Mortgage Association ("Respondent") violated provisions of
13 the Federal Election Campaign Act of 1971, as amended ("the Act").

14 **I. LAW¹**

15 The Act prohibits "any corporation organized by authority of any law of Congress" from
16 making "a contribution or expenditure in connection with any election to any political office."
17 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political committee, or other person"
18 from knowingly accepting or receiving "any contribution prohibited by this section." *Id.*

19 For purposes of Section 441b, the terms "contribution" and "expenditure" include "any
20 direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services,
21 or anything of value . . . to any candidate, campaign committee, or political party or organization,
22 in connection with any election to any of the offices referred to in" Section 441b.

23 The Act excludes from the definition of contribution:

24 any gift, subscription, loan, advance, or deposit of money or anything of

¹ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Factual and Legal Analysis exclude the changes made by BCRA.

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value to a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office.

2 U.S.C. § 431(8)(B)(viii). This is the so-called "building fund exemption." *See, e.g.*, Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, and 1983-8. Funds falling under the building fund exemption are exempt from the prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore, national and state committees of political parties may accept donations covered by the building fund exemption from corporations organized by authority of any law of Congress. *See id.* The provisions of the building fund exemption apply only to "a national or a State committee of a political party" and not to other committees, such as local party committees or PACs. *See* Advisory Opinions 1988-12, 1996-8, and 1978-78.

II. COMPLAINT

On April 23, 2001, Respondent was notified of the complaint. The complaint alleged that "two Congressionally-chartered corporations, the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae)" made contributions to the non-federal accounts of several national party committees in violation of 2 U.S.C. § 441b(a). After a discussion of the applicable law, the complaint stated, "Fannie Mae and Freddie Mac are strictly prohibited from making contributions to the nonfederal accounts of national party committees which are used to influence federal, state, or local elections."

The complaint included "a 1997-2000 summary report of soft money donations to nonfederal accounts" by Freddie Mac and Fannie Mae,² which named the accounts involved in

² This summary report apparently was created by running a transaction query (data by individual) on the Commission's website. Complainant apparently used the names "Fannie Mac" and "Freddie Mac" as the last names in this individual search. The receipts generated were attached to the complaint. The complaint did not include

1 the alleged violations and gave the dates and amounts of the contributions in question.
 2 Complainant stated that "some of these contributions may have been made to permissible
 3 'building fund' accounts." Nevertheless, the complaint calculated that Fannie Mae's
 4 "non-building soft money donations totaled almost \$340,000" and that "Freddie Mac's
 5 non-building soft money donations totaled slightly in excess of \$400,000." The complaint
 6 requested that the Commission "examine the building fund contributions (in excess of \$1 million
 7 by Fannie Mae and in excess of \$2.4 million by Freddie Mac) to ensure that these funds were not
 8 diverted to prohibited nonfederal accounts."

9 **III. RESPONSE**

10 Fannie Mae responded, through counsel, by letter dated May 9, 2001. The response
 11 stated that after "a thorough independent audit of Fannie Mae's contributions to national party
 12 nonfederal accounts from 1997-2000" it was "determined that almost all of these contributions
 13 were designated specifically for and deposited into 'building fund' accounts." The response
 14 included the results of this audit and supporting documentation as exhibits.

15 The response stated that the audit uncovered that Fannie Mae's contributions "made to
 16 the Republican Governors Association (RGA) for membership dues were deposited by the RGA
 17 into an RNC Republican National State Elections Committee (RNSEC) account that could be
 18 used to support candidates for state and local elections." According to the response, Fannie Mae
 19 "was under the belief that the payments were being made to a non-party trade association and
 20 that they would be deposited into an RGA account that is used to cover the costs of conferences,

receipts generated using "FannieMac" as the last name or "Mac, Fannie" and "Mac, Freddie" as the last and first names, which would have included more Fannie Mae and Freddie Mac donations. This caused the complaint to exclude \$496,250 in receipts reported from Fannie Mae and Freddie Mac from 1997-2000.

Furthermore, subsequent to the complaint, one of the National Republican Congressional Committee's non-federal accounts, NRCCC-Non Federal #1, reported a contribution of \$25,000 from Fannie Mae as received on 05/30/02. See discussion on page 5, *infra*.

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1 dinners, and other benefits offered to RGA members." The response continued, "Fannie Mae
2 was unaware at the time these payments were made that these funds could be deposited into an
3 election-related nonfederal account used to support candidates for state and local offices." The
4 response attached as Exhibit 6 a copy of a letter Fannie Mae sent to the RGA "requesting that
5 each of its membership dues payments be refunded in full or be re-designated to a party building
6 fund account." The response continued, "These payments were returned in full to Fannie Mae
7 on April 12, 2001." The response stated that "the full refund of these membership dues
8 payments ensures that no Fannie Mae funds have been used for an impermissible purpose under"
9 the Act.

10 The response further stated, "For all but two of the donations to the accounts other than
11 the RNSEC, Fannie Mae located copies of cancelled checks and/or disbursement requests
12 verifying that the donations in question were designated specifically for party building fund
13 purposes and were deposited into building fund accounts."³ The response continued, "These
14 donations are unquestionably lawful under" the Act and "there is no basis for any action against
15 Fannie Mae with respect to these donations."

16 In reference to the two donations to accounts other than the RNSEC for which Fannie
17 Mae failed to locate cancelled checks or disbursement requests, the response stated that "Fannie
18 Mae used alternative means to confirm that these donations were deposited into building fund
19 accounts." The response stated that the first such donation was "a \$700 payment to the NRCCC
20 Nonfederal Account on June 16, 1999." The response stated that "Fannie Mae sought
21 confirmation from the NRCC that this amount was deposited into a building fund account"

³ This statement is not wholly correct. Two of the cancelled checks included in Exhibit 2.A totaling \$150,000 were not specifically designated for building fund purposes by Fannie Mae. Neither the \$50,000 check dated June 29, 1999 to the "1999 Republican Senate-House Dinner Dinner" nor the \$100,000 check dated May 19, 2000 to the "2000 Republican Senate-House Dinner" contained a designation.

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1 through a letter attached as Exhibit 4 and that the "NRCC's general counsel, Don McGahn,
 2 confirmed by telephone that the \$700 payment was deposited into the NRCC's building fund
 3 account." The response stated that the second donation referenced was "a \$25,000 donation on
 4 July 7, 1999 to the NRSC Building Fund account." The response stated that "a memorandum to
 5 Fannie Mae from the 1999 Republican Senate House Dinner" states that this donation was
 6 "transferred to the NRSC Building Fund from the \$50,000 donation that Fannie Mae made to the
 7 1999 Republican Senate/House Dinner Nonfederal Building Fund on the same date" and that
 8 "donations to the Dinner Committee's Building Fund are distributed only to the building funds of
 9 the NRCC and NRSC."

10 **IV. ANALYSIS**

11 Based on the complaint and the responses, it appears that Fannie Mae may have violated
 12 2 U.S.C. § 441b(a) in connection with its contributions to the Republican Governors Association
 13 and the National Republican Congressional Committee and by failing to designate certain
 14 contributions for building fund purposes. Fannie Mae is a corporation organized by authority of
 15 a law of Congress, 12 U.S.C. § 1716 *et seq.*, and therefore may not make any contribution in
 16 connection with any election to any political office. 2 U.S.C. § 441b(a). It may, however, make
 17 donations under the building fund exemption because they are not considered contributions.⁴

18 Following receipt of the response, the National Republican Congressional Committee
 19 reported, in its 2002 July Quarterly Report, filed on 07/15/02, a \$25,000 contribution received on
 20 05/30/02 from Fannie Mae by one of its non-federal accounts, the NRCCC-Non Federal #1.
 21 This non-federal account was separate from the National Republican Congressional Committee's
 22 building fund, the NRCCC-Non Federal Building Fund. There is no information in hand

⁴ In the Analysis, the term "donation" is used to refer to the permissible transfers from Fannie Mae pursuant to the so-called "building fund exemption" and the term "contribution" is used to refer to contributions as defined by the Act.

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1 indicating that Fannie Mae designated this \$25,000 contribution for building fund purposes,
2 thereby placing this contribution outside of the "building fund exemption" of 2 U.S.C.
3 § 431(8)(B)(viii).

4 Fannie Mae's response conceded that its contributions to the Republican Governors
5 Association in 1998, 1999, and 2000 were ultimately deposited into a Republican National State
6 Elections Committee account that might have been used to support state or local candidates for
7 election. In addition, information from Fannie Mae's response also indicates that it made other
8 contributions without designating them for building fund purposes, thereby losing the "building
9 fund exemption" from prohibited contributions set forth in 2 U.S.C. § 431(8)(B)(viii).

10 In Exhibit 2 to its response, Fannie Mae included copies of internal disbursement requests
11 and the fronts and backs of cancelled checks relating to the donations in issue. In two cases,
12 involving a \$50,000 check dated June 29, 1999 to the "1999 Republican Senate-House Dinner"
13 and a \$100,000 check dated May 19, 2000 to the "2000 Republican Senate-House Dinner,"
14 neither the check front nor the disbursement request designates the contribution for a building
15 fund purpose; in both cases the check backs show the checks were deposited into the respective
16 Dinner Committee building funds. In contrast, in 1997, both the disbursement request and the
17 check were designated for the "Republican Senate-House Dinner Bldg. Fund."

18 In two other cases, Fannie Mae's response noted that Fannie Mae had been unable to
19 locate either a cancelled check or a disbursement request indicating that payment had been made
20 to a non-federal building account fund. In one case, involving a \$700 payment to the National
21 Republican Congressional Committee's non-federal account on June 16, 1999, which Fannie
22 Mae traced to a registration fee to the National Republican Conference for two employees, the
23 response stated that the National Republican Congressional Committee confirmed to Fannie Mae

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1 in 2001 that the \$700 had been deposited into the National Republican Congressional
2 Committee's building fund. There is no information in hand, however, that Fannie Mae
3 designated the \$700 for this purpose. In the other case, involving a \$25,000 contribution
4 reported as received by the National Republican Senatorial Committee's building fund account
5 on July 7, 1999, the response traced this contribution to the \$50,000 check dated June 29, 1999
6 to the 1999 Dinner Committee, discussed in the preceding paragraph. As noted, that contribution
7 was not designated for building account purposes.⁵

8 Therefore, there is reason to believe that the Federal National Mortgage Association
9 violated 2 U.S.C. § 441b(a).

⁵ A memorandum dated May 18, 1999, from counsel to the National Republican Senatorial Committee Building Fund on letterhead from the 1999 Republican Senate-House Dinner (Exhibit 5 to the Fannie Mae response), advised, "The Dinner Committee will distribute all building fund contributions only to the building fund accounts of the NRSC and NRCC." However, the memorandum further stated:

To ensure that your contribution will be deposited into the building fund account and will only be distributed to the NRSC and NRCC building accounts and expended to defray the costs associated with the NRSC's and NRCC's headquarters, please make your contributions payable to the "1999 Republican Senate House Dinner Committee Building Fund."

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